

making and processing loans guaranteed by the Agency. Section 4280.128 addresses the application and documentation requirements, separating the requirements for loans over \$600,000 and for loans of \$600,000 or less. Section 4280.129 addresses the evaluation of guaranteed loan applications. Sections 4280.130 through 4280.160 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(e) Section D presents the process by which the Agency will make direct loans.

(f) Section E presents the process by which the Agency will make combined loan and grant funding available.

(g) Appendix A contains the Technical Report requirements for projects with total eligible project costs of \$200,000 or less and Appendix B contains the Technical Report requirements for projects with total eligible project costs greater than \$200,000.

**§ 4280.103 Definitions.**

Terms used in this subpart are defined in either § 4279.2 of this chapter or in this section. If a term is defined in both § 4279.2 and this section, it will have, for purposes of this subpart only, the meaning given in this section.

*Agency.* The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the 9006 program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by “Agency” or “Rural Development” as applicable.

*Agricultural producer.* An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

*Anaerobic digester project.* A renewable energy system that uses animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

*Annual receipts.* The total income or gross income (sole proprietorship) plus cost of goods sold.

*Applicant.* The agricultural producer or rural small business that is seeking a grant, guaranteed loan, or direct loan, or a combination of a grant and loan, under this subpart.

*Assignment guarantee agreement (Form RD 4279-6) or successor form.* A signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan.

*Bioenergy project.* A renewable energy system that produces fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

*Biogas.* Biomass converted to gaseous fuels.

*Biomass.* Any organic material that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

*Borrower.* Any party or parties liable for a direct or guaranteed loan made under this subpart except guarantors.

*Capacity.* The maximum load that an apparatus or heating unit is able to meet on a sustained basis as rated by the manufacturer.

*Commercially available.* A system that has a proven operating history specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

*Conditional Commitment (Form RD 4279-3) or successor form.* Agency notice to the lender that the loan guarantee is approved subject to the completion of

all conditions and requirements set forth by the Agency.

*Default.* The condition where a borrower or grantee is not in compliance with one or more loan covenants or grant conditions as stipulated in the Letter of Conditions, Conditional Commitment, or Loan or Grant Agreement.

*Delinquent loan.* A loan for which a scheduled loan payment has not been received by the due date or within any grace period as stipulated in the promissory note and loan agreement.

*Demonstrated financial need.* The demonstration by an applicant that the applicant is unable to finance the project from its own and commercially available resources without grant assistance, or that the project proposed by the applicant cannot achieve the income and cashflows to sustain it financially over the long term without grant assistance.

*Design/build method.* A method of project development whereby all design, engineering, procurement, construction, and other related project activities are performed under a single contract. The prime contractor is solely responsible and accountable for successful delivery of the project to the owner.

*Eligible project costs.* The total project costs that are eligible to be paid with program funds.

*Energy assessment.* A report conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency by analyzing energy bills and briefly surveying the target building, machinery, or system. The report identifies and provides a savings and cost analysis of low-cost/no-cost measures. The report will estimate the overall costs and expected energy savings from these improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

*Energy assessor.* An individual or entity that conducts an energy assessment.

*Energy audit.* A report conducted by a Certified Energy Manager or Professional Engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The report will provide detailed project costs and

savings information with a high level of confidence sufficient for major capital investment decisions. It will estimate costs, expected energy savings from the subject improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

*Energy auditor.* An individual or entity that conducts an energy audit.

*Energy efficiency improvement.* Improvements to a facility, building, or process that reduces energy consumption, or reduces energy consumed per square foot.

*Existing business.* A business that has completed at least one full business cycle.

*Fair market value of equity in real property.* Fair market value of real property, as established by appraisal, less the outstanding balance of any mortgages, liens, or encumbrances.

*Feasibility study.* An analysis of the economic, market, technical, financial, and management feasibility of a proposed project or business.

*Financial feasibility.* The ability of a project or business to achieve the income, credit, and cashflows to financially sustain a project over the long term. The concept of financial feasibility includes assessments of the cost-accounting system, the availability of short-term credit for seasonal businesses, and the adequacy of raw materials and supplies.

*Geothermal, direct use.* A system that uses thermal energy directly from a geothermal source.

*Geothermal, electric generation.* A system that uses geothermal energy to produce high pressure steam for electric power production.

*Holder.* A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form RD 4279-6.

*Hydrogen project.* A renewable energy system that produces hydrogen or, a renewable energy system that uses mechanical or electric power or thermal

energy from a renewable resource using hydrogen as an energy transport medium.

*In-kind contributions.* Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are contributed by the applicant or a third-party entity. The identifiable value of goods and services must directly benefit the project.

*Interconnection agreement.* The terms and conditions governing the interconnection and parallel operation of the grantee's or borrower's electric generation equipment and the utility's electric power system.

*Interim financing.* A temporary or short-term loan made with the clear intent that it will be repaid through another loan, cash, or other financing mechanism. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

*Large solar, electric.* Large solar electric systems are those for which the rated power of the system is larger than 10 kilowatts (kW). Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

*Large solar, thermal.* Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

*Large wind system.* A wind energy project for which the rated power of the individual wind turbine(s) is larger than 100kW.

*Lender.* The organization making, servicing, and collecting the loan that is guaranteed under the provisions of this subpart.

*Lender's agreement (Form RD 4279-4) or successor form.* Agreement between the Agency and the lender setting forth the lender's loan responsibilities.

*Loan Note Guarantee (Form RD 4279-5) or successor form.* Issued and executed by the Agency containing the terms and conditions of the guarantee.

*Loan-to-value.* The ratio of the dollar amount of a loan to the dollar value of the discounted collateral pledged as security for the loan.

*Matching funds.* The funds needed to pay for the portion of the eligible project costs not funded or guaranteed by the Agency through a grant, direct loan, or guaranteed loan under this program. Unless authorized by statute, matching funds cannot include grants from any Federal grant program.

*Necessary capital improvement.* A capital improvement required to keep an existing system in compliance with regulations or to maintain technical or operational feasibility.

*Parity.* A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender is affected on a pro rata basis.

*Participation.* The sale of interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

*Passive investor.* An equity investor that does not actively participate in management and operation decisions of the business entity as evidenced by a contractual arrangement.

*Post-application.* The date that the Agency receives an essentially completed application. An "essentially completed" application is an application that contains all parts necessary for the Department of Agriculture (USDA) to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

*Power purchase arrangement.* The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower to another party.

*Pre-commercial technology.* Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available.

*Promissory Note.* Evidence of debt. A note that a borrower signs promising to pay a specific amount of money at a stated time or on demand.

*Qualified consultant.* A third-party entity possessing the knowledge, expertise, and experience to perform in an efficient, effective, and authoritative manner the specific task required.

*Qualified party.* An entity possessing the knowledge, expertise, and experience to perform a specific task.

*Renewable energy.* Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.

*Renewable energy system.* A system that produces or produces and delivers usable energy from a renewable energy source.

*Rural.* Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

*Simplified application.* An application that conforms to the criteria and procedures specified in § 4280.109.

*Small business.* An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards by the North American Industry Classification System (NAICS) found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independent of direct Government control. With the exception of the entities described above, all other non-profit entities are excluded.

*Small solar, electric.* Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

*Small solar, thermal.* Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller or that have a

collector area of 1,000 square feet or less.

*Small wind system.* Wind energy system for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. A small wind system is either stand-alone or connected to the local electrical system at less than 600 volts.

*Spreadsheet.* A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheets and income statements and may include cashflow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

*State.* Any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

*Total project cost.* The sum of all costs associated with a completed project.

*Used equipment.* Any equipment that has been used in any previous application and is provided in an "as is" condition.

*Very small business.* A business with fewer than 15 employees and less than \$1 million in annual receipts.

#### § 4280.104 Exception authority.

The Administrator may, on a case-by-case basis, make an exception to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the USDA's interest.

#### § 4280.105 Appeals.

Only the grantee, borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the